



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

SEP 11 2003

CERTIFIED MAIL: RETURN RECEIPT REQUESTED - 7001 0360 0001 1266 4579

Ms. Sandra Martin, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Dr. East, Bldg. 1
Santa Fe, NM 87505

Dear Ms. Martin:

The United States Environmental Protection Agency (EPA) is hereby providing advance notification of our intention to take direct enforcement action against Washington Group International, Westinghouse Government Environmental Services Company, LLC (Westinghouse), in Carlsbad, New Mexico, for violations of the Resource Conservation and Recovery Act (RCRA). This notification is based upon the provisions outlined in the Memorandum of Understanding between the New Mexico Environment Department (NMED) and the EPA. The violations were discovered through a RCRA Compliance Evaluation Inspection (CEI) conducted by the EPA during January 16-17, 2002.

Enclosed for your review and comment is a draft Complaint, Compliance Order, and Notice of Opportunity for Hearing (Complaint) - Docket Number 6-RCRA-6-2003-0920. The Complaint addresses violations discovered at two of Westinghouse's facilities: 5301 Sierra Vista Drive and 1502 East Greene Street. These facilities manufacture nuclear storage containers. The facilities had notified as Conditionally Exempt Small Quantity Generators. However, the CEI revealed that they were actually generating and managing quantities of hazardous waste sufficient to bring them into full regulation. Please review the document and provide any comments within ten (10) working days of receipt of this letter.

If you have any comments or questions, please contact Joel Dougherty of my staff at (214) 665-2281. Thank you for your assistance and cooperation.

Sincerely yours,

Mark W. Potts, P.E., Chief
Hazardous Waste Enforcement Branch

Enclosure

030912



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:

Washington Group International
Westinghouse Government
Environmental Services
Company, LLC

5301 Sierra Vista Drive
Carlsbad, NM 88221-2138
NMD982283566

1502 East Greene Street
Carlsbad, NM 88220-9759
NMD986684314

RESPONDENT

DOCKET NUMBER

6-RCRA-6-2003-0920

**COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR HEARING**

The Complainant, the Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6, issues this COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING, ("Complaint") to Washington Group International, Westinghouse Government Environmental Services, LLC, ("Respondent"), Carlsbad, New Mexico.

I.

STATEMENT OF AUTHORITY

This Complaint is issued pursuant to Section 3008 of the Resource Conservation and Recovery Act of 1976 (RCRA),

42 U.S.C. § 6928, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). Section 3008(a) of RCRA authorizes the Administrator of the EPA to issue a complaint whenever the Administrator has information that any person has violated or is violating any requirement of Subtitle C of RCRA, 42 U.S.C. §§ 6921-6939e.

The requirements of Subtitle C include the requirements of the authorized program in a State which has been authorized to carry out a hazardous waste program under Section 3006 of RCRA, 42 U.S.C. § 6926. On January 25, 1985 (50 Fed. Reg. 1515) the State of New Mexico received final authorization for its base RCRA program, and there have been subsequent authorized revisions to said base program. The New Mexico Environment Department (NMED) is the designated State Agency responsible for carrying out said RCRA program.

The State of New Mexico's authority to implement the base program is the New Mexico Statutes 1978 Annotated (NMSA), Sections 74-1-8 and 74-4-4 (as amended). The New Mexico Administrative Code (NMAC) Title 20, Chapter 4, Part 1, was promulgated and adopted under the NMSA, Hazardous Waste Act.

The NMAC incorporates by reference certain sections of the federal hazardous waste regulations found in Title 40, Code of Federal Regulations (40 C.F.R.).

To the extent that factual allegations or legal conclusions set forth in this Complaint are based on provisions of New Mexico's authorized hazardous waste management program regulations, those provisions are cited as authority for such allegations or conclusions. Any analogous provisions of the Federal hazardous waste management program under Subtitle C of RCRA are cited parenthetically thereafter for convenience. Factual allegations or legal conclusions based solely on provisions of the Federal hazardous waste management program added or amended by HSWA cite those federal provisions as authority for such allegations or conclusions.

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This Complaint pertains to violations of the State-authorized program. However, on January 16-17, 2002, EPA conducted a RCRA Compliance Evaluation Inspection at the Respondent's facilities. Therefore, EPA is exercising its oversight authority of the State's authorized program regarding the violations alleged in this Complaint. The violations in this Complaint were identified by the EPA, and the EPA is assuming full enforcement authority for this Complaint.

The Complainant in this action is the Director, Compliance Assurance and Enforcement Division, EPA Region 6, who is the person to whom the authority has been delegated to issue such Complaints in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

II.

NOTICE TO THE STATE

Notice of this action has been given to the State of New Mexico prior to the issuance of this Complaint pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

III.

PRELIMINARY STATEMENT

1. Respondent, Washington Group International, Westinghouse Government Environmental Services, LLC (WGES), is a corporation incorporated in and under the laws of the State of Delaware on October 9, 1998.

2. WGES is the lessor of a manufacturing operation located at 5301 Sierra Vista Drive, Carlsbad, New Mexico 88221-2138 which builds containers used to transport and store nuclear materials.

3. WGES is also the Lessor of a manufacturing operation located at 1502 East Greene Street, Carlsbad, New Mexico 88220-9759 which builds containers used to transport and store nuclear materials.

4. Operations began at Sierra Vista Drive in February 1994 and at East Greene Street in January 1994.

5. Each of Respondent's operations, along with all contiguous land and structures, other appurtenances and improvements on the land, is a "Facility" as the term is defined at NMAC § 20.4.1.100, [40 C.F.R. § 260.10].

6. Respondent is a "person" as the term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), NMAC § 20.4.1.100, and [40 C.F.R. § 260.10].

7. Respondent's Registered Agent for service is The United States Corporation Company, 125 Lincoln Avenue, Suite 223, Santa Fe, New Mexico 87501.

8. Respondent is the owner and operator of each facility listed in Paragraphs 2 and 3, above, as those terms are defined at NMAC § 20.4.1.100 [40 CFR § 260.10].

9. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), on January 16-17, 2002, EPA's representatives conducted a Compliance Evaluation Inspection (Inspection) at both of Respondent's Facilities listed in Paragraphs 2 and 3, above.

10. Pursuant to RCRA § 3007(a), 42 U.S.C. § 6927(a), on June 4, 2003, EPA issued an Information Request (Request) to Respondent regarding its operations at both Facilities.

11. On July 14, 2003, Respondent submitted its Response to EPA's Request (Response).

12. Respondent stated in its Response, that the facility located at Sierra Vista Drive notified of hazardous waste management activity in 1988 and received the EPA Identification Number of NMD982283566.

13. Respondent stated in its Response, that the facility located at East Greene Street notified of hazardous waste

management activity in 1993 and received the EPA Identification Number of NMD986684134.

14. Respondent is a "generator" of hazardous waste as that term is defined in NMAC § 20.4.1.100 [40 C.F.R. §260.10].

15. Respondent notified as a Conditionally Exempt Small Quantity Generator, as that term is defined in NMAC § 20.4.1.200 [40 C.F.R. § 261.5].

16. Pursuant to NMAC § 20.4.1.200 [40 C.F.R. § 261.5(g)(2)], a Conditionally Exempt Small Quantity Generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms (Kg) of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of NMAC § 20.4.1.300 [40 C.F.R. § 262] applicable to generators of between 100 Kg and 1000 Kg of hazardous waste in a calendar month.

17. During the Inspection at Sierra Vista Drive, EPA's representatives observed and photographed two outdoor areas used to store metal and plastic 55-gallon drums and 5-gallon containers. EPA's representatives observed approximately sixty-nine (69) drums in this area.

18. Respondent stated in its Response, that the facility located at Sierra Vista Drive had accumulated and was storing eighty five (85) drums at the time of the EPA Inspection. Nine

(9) of these drums contained hazardous wastes at the time of the Inspection:

- a. Seven (7) drums of hazardous waste alcohol;
- b. Two (2) drums of hazardous sodium hydroxide waste.

19. The materials identified in Paragraph 18 are each a "hazardous waste", as that term is defined at NMAC § 20.4.1.200 [40 C.F.R. § 261.3].

20. Respondent stated in its Response, that the total amount of hazardous waste stored at the Sierra Vista Drive facility during the time of the Inspection was 1,635 Kg. Respondent accumulated more than a total of 1000 Kg of hazardous wastes at this site.

21. Therefore, Respondent's facility at Sierra Vista Drive is subject to regulation under the special provisions of NMAC § 20.4.1.300 [40 C.F.R. § 262] applicable to generators of between 100 Kg and 1000 Kg of hazardous waste in a calendar month.

22. During the Inspection at East Greene Street, EPA's representatives observed and photographed an outdoor area used to store 55-gallon drums. EPA's representatives observed approximately twenty-seven (27) drums in this area.

23. Respondent stated in its Response, that the facility located at East Greene Street had accumulated and was storing twenty-four (24) drums of waste, and a few empty drums, at the

time of the EPA Inspection. Twelve (12) of these drums contained hazardous wastes at the time of the Inspection:

- a. Eight (8) drums of waste paint, waste flammable liquids, and paint waste related materials;
- b. Four (4) drums of hazardous waste liquid containing chromium and/or lead.

24. The materials identified in Paragraph 23 are each a "hazardous waste", as that term is defined at NMAC § 20.4.1.200 [40 C.F.R. § 261.3].

25. Respondent stated in its Response, that the total amount of hazardous waste stored at the East Greene Street facility during the time of the Inspection was 2,488 Kg. Respondent accumulated more than a total of 1000 Kg of hazardous wastes at this site.

26. Therefore, Respondent's facility at East Greene Street is subject to regulation under the special provisions of NMAC § 20.4.1.300 [40 C.F.R. § 262] applicable to generators of between 100 Kg and 1000 Kg of hazardous waste in a calendar month.

27. Respondent stated in its Response, that prior to the Inspection, the Sierra Vista Drive facility last shipped hazardous waste off site in June 2000.

28. Therefore, hazardous wastes had been accumulating at the Sierra Vista Drive facility from July of 2000 until the time of the Inspection, approximately nineteen (19) months.

29. Respondent stated in its Response, that prior to the Inspection, the East Greene Street facility last shipped hazardous waste off site in March 2001.

30. Therefore, hazardous wastes had been accumulating at the East Greene Street facility from April 2001 until the time of the Inspection, approximately nine(9) months.

31. During the Inspection at both Sierra Vista Drive and East Greene Street, EPA's representatives observed and photographed drums which were not labeled with the words "Hazardous Waste", were not marked with the date upon which accumulation of hazardous wastes began, and which were not closed. Some of these containers were in poor condition.

32. During the Inspection at both Sierra Vista Drive and East Greene Street, facility representatives informed EPA representatives that storage areas were not inspected on a weekly basis.

33. During the Inspection at Sierra Vista Drive, EPA's representatives observed and photographed drums which were stored in such a way that there was a high probability of release of the contents to the environment. Some open-top drums and 5-gallon containers, full of liquids, did not have lids; some drums were

set in locations where they could be struck by a vehicle and toppled.

34. During the Inspection at both Sierra Vista Drive and East Greene Street, EPA's representatives did not observe any communications devices or alarms immediately available in the areas used to store hazardous waste.

35. During the Inspection at Sierra Vista Drive, EPA's representatives did not observe any fire control equipment in the areas used to store hazardous waste.

36. During the Inspection at both Sierra Vista Drive and East Greene Street, facility representatives could not show that they had attempted to make arrangements with any local authorities, emergency responders, or medical service providers; i.e., to familiarize them with the characteristics of the facilities, any potential dangers inherent in hazardous waste management operations, or the types of injuries that could be incurred by employees involved in these types of operations.

37. During the Inspection at Sierra Vista Drive, EPA's representatives observed that the facility representative in charge of hazardous waste management had not been authorized to possess a key to the fenced hazardous waste storage area.

38. During the Inspection at both Sierra Vista Drive and East Greene Street, EPA representative did not observe posting of

any emergency information or telephone numbers at the areas storing hazardous wastes.

39. During the Inspection at both Sierra Vista Drive and East Greene Street, facility representatives could not show that employees were thoroughly familiar with proper waste handling and emergency procedures.

IV.

RCRA VIOLATIONS

COUNT I: OPERATING A HAZARDOUS WASTE STORAGE FACILITY WITHOUT A PERMIT, IN VIOLATION OF RCRA § 3005(a), NMAC § 20.4.1.900, [40 C.F.R. §§ 270.1 & 270.10]

40. Paragraphs 1 through 39 are hereby incorporated by reference.

41. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), NMAC § 20.4.1.900, [40 C.F.R. §§ 270.1(c) & 270.10], prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status.

42. NMAC § 20.4.1.100, [40 C.F.R. §260.10] defines storage as the holding of hazardous waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

43. Pursuant to NMAC § 20.4.1.300, [40 C.F.R. § 262.34(d)], a generator who generates greater than 100 Kg but less than 1000 Kg of hazardous waste in a calendar month may accumulate

hazardous waste on-site [in containers] for 180 days or less without a permit or without having interim status provided that:

- a. The generator complies with the requirements of NMAC § 20.4.1.600 [subpart I of part 265 (except §§ 265.176 and 265.178)];
- b. The generator complies with NMAC § 20.4.1.300, [40 C.F.R. §§ 262.34(a)(2) and 262.34(a)(3)];
- c. The generator complies with NMAC § 20.4.1.600 [subpart C of part 265];
- d. The generator complies with the following requirements:

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(1) At all times there must be at least one employee either on the premises or on call to respond to an emergency.

(2) The generator must post emergency information next to the telephone: the name and telephone number of the emergency coordinator, the location of fire extinguishers and spill control material, and the telephone number of the fire department.

(3) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures relevant to their responsibilities during normal facility operations and emergencies.

(4) The emergency coordinator or his designee must respond to any emergencies that arise.

44. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart I(40 C.F.R. § 265.171)], if a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition.

45. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart I (40 C.F.R. § 265.173)]:

a. A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste;

b. A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

46. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. Part 265, Subpart I (40 C.F.R. § 265.174)], the owner or operator must inspect areas where containers are stored, at least weekly.

47. Pursuant to NMAC § 20.4.1.300 [40 C.F.R. § 262.34(a)(2)], [a generator may accumulate hazardous waste on-site in containers, provided that] the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

48. Pursuant to NMAC § 20.4.1.300 [40 C.F.R.

§ 262.34(a)(3)], [a generator may accumulate hazardous waste on-site in containers, provided that] while being accumulated on-site, each container is labeled or marked clearly with the words, "Hazardous Waste".

49. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart C (40 C.F.R. § 265.31)], facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste, or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

50. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart C (40 C.F.R. § 265.32)], all facilities must be equipped with the following types of equipment:

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- a. An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
 - b. A device such as a telephone (immediately available at the scene of operations) or hand-held two-way radio capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;
 - c. Portable fire extinguishers or fire control equipment, spill control equipment, and decontamination equipment.

51. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart C (40 C.F.R. § 265.34)], whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee. If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene or operation) or a hand-held two-way radio, capable of summoning external emergency assistance.

52. Pursuant to NMAC § 20.4.1.600 [40 C.F.R. part 265, Subpart C (40 C.F.R. § 265.37)], the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:

- a. Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associate hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

b. Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

c. Agreements with State emergency response teams, emergency response contractors, and equipment suppliers;

d. Arrangements to familiarize hospitals with the properties of hazardous waste handled at the facility

and types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

53. Paragraphs 43 through 52 list requirements that must be met by generators who generate greater than 100 Kg but less than 1000 Kg of hazardous waste in a calendar month, in order to operate without a permit or without having interim status (Permit Exemption).

54. Pursuant to NMAC § 20.4.1.900, [40 C.F.R. §§ 270.1(c) & 270.10], no person may store, treat or dispose of hazardous waste without a permit or interim status, unless they meet the Permit Exemption requirements of NMAC § 20.4.1.300, [40 C.F.R. § 262.34(d)].

55. Respondent was storing hazardous waste in containers.

56. Respondent does not have a RCRA permit or interim status.

57. Respondent failed to comply with the Permit Exemption requirements listed in paragraphs 43 through 52.

58. Therefore, Respondent has violated NMAC § 20.4.1.900, [40 C.F.R. §§ 270.1(c) & 270.10], by operating two hazardous waste storage facilities (Sierra Vista Drive and East Greene Street) without a permit or interim status.

V.

COMPLIANCE ORDER

Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Respondent is hereby **ORDERED** to take the following actions, and provide evidence of compliance within the time period specified below.

A. Within thirty (30) days of the effective date of this Complaint, Respondent shall accurately assess its monthly generation of hazardous waste and either modify its notification of hazardous waste management activity or certify as to the accuracy of its current status as a Conditionally Exempt Small Quantity Generator, whichever is appropriate. If it is determined that Respondent is not exempt from full regulation under RCRA (Conditionally Exempt Small Quantity Generator), then Respondent must comply with the appropriate requirements for hazardous waste generators.

B. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that the quantities of hazardous waste stored on site never exceed the regulatory limits imposed by RCRA.

C. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that hazardous wastes are not stored on-site longer than the regulatory limits imposed by RCRA.

D. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that containers used to store hazardous waste are in good condition and stored in an orderly fashion that minimizes the potential for unplanned releases of hazardous waste.

E. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that containers storing hazardous waste are labeled with the words "Hazardous Waste", marked with the date upon which each period of accumulation begins, and that the containers remain closed at all times, except when adding or removing wastes.

F. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that hazardous waste storage areas are inspected weekly.

G. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure

that hazardous waste storage areas are provided with internal communications or alarm systems capable of providing immediate emergency instruction to facility personnel.

H. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure a device such as a telephone or two-way radio capable of summoning emergency assistance is immediately available at the scene of operations.

I. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that emergency information is posted next to the telephone, including the name and telephone number of the Emergency Coordinator, the telephone number of the fire department, and the location of emergency equipment.

J. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that all employees who manage hazardous waste are thoroughly familiar with proper waste handling and emergency procedures.

K. Within thirty (30) days of the effective date of this Complaint, Respondent shall take the necessary steps to ensure that hazardous waste storage areas are provided with fire control equipment, spill control equipment, and decontamination equipment.

L. Within thirty (30) days of the effective date of this Complaint, Respondent shall attempt to make proper arrangements with local police, fire departments, hospitals, and emergency response teams to familiarize them with the layout of the facility and associated hazards, and the types of injuries which could result from mishaps.

M. Within thirty (30) days of the effective date of this Complaint, Respondent shall provide documentation to the EPA and NMED which will verify Respondent's compliance with all requirements of this Order.

N. In all instances in which this Order requires written submissions to EPA, each submission must be accompanied by the following certification signed by a "responsible official":

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"I certify that the information contained in or accompanying this submission is true, accurate and complete. As to those identified portions of this submission for which I cannot personally verify the truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting upon my direct instructions, made the verification, that this information is true, accurate, and complete."

O. For the purpose of this certification, a "responsible official" of a Respondent means a person with the authority to bind the Respondent as to the truth, accuracy and completeness of all certified information.

P. Copies of all documentation required by this Order shall be sent to the following persons:

Carol D. Peters-Wagnon, Chief (6EN-HS)
Arkansas, Louisiana, Oklahoma, & New Mexico Section
RCRA Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Jeffrey Clay, (6RC-EW)
Legal Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

NOTICE: If you fail to take the required action(s) within the time specified in the Order, you may be liable for an additional penalty of up to TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$ 27,500.00) for each day of continued noncompliance, and may be subject to further enforcement action, including an injunction from any further generation, transportation, treatment, storage or disposal of hazardous waste and such other and further relief as may be necessary to achieve compliance with Subtitle C of RCRA, all pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(C).

Notwithstanding any other provision of this Complaint, an enforcement action may be brought against the Respondent pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority if EPA finds that the handling, storage, treatment, transportation or disposal of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.

VI.

PROPOSED CIVIL PENALTY

Section 3008 of RCRA authorizes a civil penalty of up to TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$ 27,500.00) per day for each violation of RCRA and the regulations promulgated thereunder. The Complainant proposes to assess a civil penalty of EIGHTY-SEVEN THOUSAND, FOUR HUNDRED AND SIXTEEN DOLLARS (\$ 87,416.00) against Respondent. The computation of this amount is based upon the particular facts and circumstances of this case, the seriousness of the violations, the threat of harm to the public health or the environment, the extent of deviation from the statutory or regulatory requirement, the duration of the violations, the economic benefit derived from non-compliance, and the Respondent's compliance history and/or good faith efforts to comply with the applicable regulations. The guidance for this computation is based on the October 1990 RCRA Civil Penalty Policy (as revised in 2003), a copy of which is enclosed with this Complaint.

The penalties were calculated as follows:

**COUNT I: OPERATING A HAZARDOUS WASTE STORAGE FACILITY
(CONTAINERS) WITHOUT A PERMIT, IN VIOLATION OF
RCRA § 3005(a), NMAC § 20.4.1.900, [40 C.F.R.
§§ 270.1 & 270.10]**

1. Gravity-Based penalty from matrix - \$ 20,900.00
(Two separate facilities: \$ 10,450.00 x 2)

- (a) Potential for harm: MODERATE
(b) Extent of deviation: MAJOR

2. Multi-day penalty - \$ 60,280.00

(a) Number of days of violation for which a penalty is proposed:

Sierra Vista Drive: 66-1=65 days
East Greene Street: 73-1=72 days

(b) Amount from multi-day penalty matrix: \$440.00

3. Economic Benefit - \$ 6,236

Proposed Total Penalty for Count I - \$ 87,416.00

VII.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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Where Respondent (1) contests any material fact, upon which the Complaint is based; (2) contends that the amount of the penalty proposed in the Complaint is inappropriate; or (3) contends that it is entitled to judgment as a matter of law, Respondent shall file a written Answer to the Complaint with the Regional Hearing Clerk, Region 6, within thirty (30) days after receipt of the Complaint.

The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where the Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. Failure of Respondent to admit, deny, or explain any material

factual allegation contained in the Complaint constitutes an admission of the allegation.

The Answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent disputes; (3) the basis for opposing any proposed relief; and (4) whether a hearing is requested. A hearing upon the issues raised by the Complaint and answer shall be held upon request of the respondent in the Answer.

The hearing, if requested, will be conducted in accordance with the provisions of the Administrative Procedure Act

(5 U.S.C. § 552 et seq.), and the Consolidated Rules of Practice, codified at 40 C.F.R. Part 22. A copy of these Rules is enclosed. Respondent may retain counsel to represent it at the hearing.

The Regional Hearing Clerk's address is:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

A copy of this Answer shall also be sent to Mr. Jeffrey Clay, Regional Counsel (6RC-EW), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

VIII.

DEFAULT ORDER

If Respondent fails to file an Answer within thirty (30) days of receipt of the Complaint, it may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action, default by Respondent constitutes an admission of all facts alleged in the complaint and a waiver of Respondent's right to a hearing under Section 3008 of RCRA, 42 U.S.C. § 6928, concerning such factual allegations. The proposed penalty shall become due and payable by Respondent without further proceedings thirty (30) days after issuance of a Final Order upon Default.

Upon issuance of the Final order upon Default, Respondent must immediately comply with the order provisions in the Complaint.

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IX.

SETTLEMENT CONFERENCE

Whether or not the Respondent requests a hearing, it may confer with Complainant concerning settlement. EPA encourages settlement consistent with the provisions and objectives of RCRA and applicable regulations. A request for a settlement conference does not extend the thirty (30) day period during which the written Answer and a request for hearing must be submitted. The settlement conference procedure may be pursued as an alternative to and simultaneous with the formal hearing

procedures. Respondent may appear at the settlement conference and/or be represented by counsel.

Any settlement reached by the parties shall be finalized upon the issuance of a written Consent Order by the Regional Administrator, EPA Region 6, in accordance with 40 C.F.R. § 22.18. The issuance of a Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

To explore the possibility of settlement in this matter, contact the attorney assigned to this case, Mr. Jeffrey Clay, Regional Counsel (6RC-EW), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, or by telephone at (214) 665-7132.

DRAFT

Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division

Dated this ____ day of _____ 2003, at Dallas, Texas.

CERTIFICATE OF SERVICE

I hereby certify that on the____day of____, 2003, the original of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing concerning Petroleum Wastewater Recycling, RCRA Docket No. XXXXXXXXX was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and a true and correct copy of such Complaint was placed in the United States mail, postage prepaid, certified mail, return receipt requested,____
_____ addressed to the following:

United States Corporation Company
125 Lincoln Avenue, Suite 223
Santa Fe, New Mexico 87501

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WHO SIGNS HERE?????